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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,504	03/28/2001	Brian N. Sawyer	04816P003	5218

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EXAMINER
BAYERL, RAYMOND J

ART UNIT	PAPER NUMBER
2173	

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>10 January 2005</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 - 17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 - 7, 10 - 15, 17* is/are rejected.

7)☒ Claim(s) *8 - 9, 16* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☒ Other: *See Continuation Sheet*.

1.   The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2.   Claims 1 – 4, 7, 10 – 15, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ono et al. ("Ono"; US #5,668,966 A).

As per independent claim 1 (see also independent claim 12), Ono's <u>SYSTEM AND METHOD FOR DIRECT MANIPULATION OF SEARCH PREDICATES</u> teaches the creation of a <u>primitive predicate by inputting search items (that is, file attributes)</u> (Abstract), which may be represented as <u>an icon representing the predicate</u> (col 4, lines 53 – 59). Thus, Ono anticipates "defining a library of available criteria" by the initial creation of <u>predicates</u>, "to be used in filtering a population of items to identify items of interest, each criterion having a graphical representation", when "library" is given a reasonably broad interpretation that remains consistent with the specification.

As for "receiving a selection of at least one of the criteria", please note the style of direct manipulation interface provided in Ono: the user can <u>create a logical operation expression for identifying search conditions by presenting, as a folder, a composite predicate representing a logical operator, and dragging and dropping an icon representing a predicate in the folder</u> (col 4, lines 37 – 52). By choosing a particular <u>composite predicate</u> from among those represented by the tree structure of figs 4B, 8, "an indication of a tier of the filter" is made, in which to place the <u>predicate</u>. Then, in the [a]<u>pplication of a predicate</u> (col 12, line 51ff), Ono teaches "identifying a list of items of interest satisfying a current set of criteria defining the filter", which will be displayed (see also claims 4, 15). With this graphical illustration of <u>predicate</u> creation (see figs 11 –

14), Ono provides "a graphical indication of the filter while the filter is constructed", as in

the working display of figs 4C, 11, in which the containership of the graphical objects

reflects the tree structure of the <u>composite predicate</u> being developed.

The inclusion of a <u>primitive predicate</u> into a <u>composite predicate</u>, as referenced

above, is one in which "a graphical representation of the selected criterion is merged

with a graphical representation of the indicated tier" (claims 2, 13); note in particular the

identically-disclosed product-of-sum "Boolean OR"/"Boolean AND" structure, as in

claims 3, 14. A "tier" in Ono is shown by OR'ed-together groups of <u>predicates</u> such as

those appearing in figs 4B, 4C. Because the intermediate <u>composite predicate</u> terms in

Ono may be individually manipulated and used to search a database collection, "an

indication of one of the tiers of the filter" may be selected and evaluated to generate "a

group of items" (claims 7, 17).

Thus, "user customizable filter criteria" (claim 10) are built with the Ono

interface, these forming a "predefined" "library of available criteria" (claim 11), in the

form of <u>primitive predicates</u> that are then stored and available for further processing.

3.   Claims 5 – 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Ono.

As per claim 5's "tally of the list of items of interest" and claim 6's "displaying the

tally of the list", while Ono must invariably display **something** in the way of a results set,

Ono does not **explicitly** teach a numerical "tally". However, it would have been obvious

to a person having ordinary skill in the art at the time of applicant's invention to provide

such an indication of count when returning results, so that the user will have a better

appreciation of the magnitude of what the "filter" has found. Indeed, in presenting

search results of any kind, Ono suggests the provision of some indication of numeric

extent for the answers, since the number of items is inherent in the presentation.

4.   Claims 8 – 9, 16 are allowable over the prior art now made of record. The

reasons are those given in paragraph 7 of the previous Office Action, mailed 28 October

2003.

5.   Applicant's arguments, originally filed 2 September 2004, and requested as the

basis for RCE consideration in the papers filed 10 January 2005, have been fully

considered but they are not persuasive.

At page 5 of the remarks, "Applicant believes that the Examiner's definition of a

library as a stored collection that is accessed at a later time is contrary to the common

usage of the term by those of ordinary skill in the art." Applicant goes on to assert that

"A library is defined as a 'collection of pre-compiled routines that a program can use.'"

However, in developing the primitive predicates in the anticipating reference Ono, a

degree of compilation has taken place, prior to their being held so that "a program can

use" them, in performing higher-complexity searches.

Applicant also believes (page 6) that "one of ordinary skill in the art would

understand that a library connotes a standard and relatively permanent collection", and

not "the ephemeral collection of user defined primitives assembled by Ono". However,

the Examiner submits that in applicant's cited dictionary definition from webopedia.com,

nothing is mentioned about how long the items in a "library" are stored, and thus, a

short-term collection like Ono's could, in circumstances such as seen in that reference,

serve in the role of a "library". The Examiner further advances the definition found in the

Microsoft Press Computer Dictionary, Third Edition: "In programming, a collection of

routines stored in a file." This also mentions nothing about the length of time the data is

stored.

Applicant then argues at page 6 that "the collection of primitives in a buffered

storage relied upon by the Examiner does not constitute a library of 'available criteria'".

However, the primitive predicate so created by Ono is indeed used as a "criteria" in a

search, and is eminently "available".

Concerning claims 5 and 6, with the "tally of the list of items of interest", applicant

argues that "The Examiner's argument that when an answer set is returned, a size or

item count is automatically present is a *non sequitur*. A search result has an inherent

size, however, it is a different matter as to whether the size or item count is in fact

known." However, the Ono reference, in returning an answer set at all, provides the

allegedly-missing "Desirability of the Claimed Invention" that applies to these claims.

The items have an inherent numerical size, and in arriving at it, Ono is both "computing"

and "displaying the tally", when "tally" is given a reasonably broad interpretation. The

source the Examiner relies upon is the Dictionary of Computers, information Processing

& Telecommunications, Second Edition, where a "tally" is "an account of the number of

times something has happened". Certainly, the reported set of results in Ono provides

"an account", at least as far as its own appearance is concerned, since it bespeaks the

number of items. It would then have been an obvious matter to infer from this basic

presentation, either by machine or by user, the kind of indication that applicant intends

"tally" to mean in claims 5, 6, since Ono has the suggestion that size matters, when it comes to search results, or what would be the point of applying criteria?

6.   This is an RCE reopening of applicant's earlier prosecution on finally rejected S.N. 09/821,504. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Bayerl whose telephone number is (571) 272-4045. The examiner can normally be reached on M - F from 9:00 AM to 4:00 PM ET.

8.   If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Cabeca, can be reached on (571) 272-4048. All patent application

related correspondence transmitted by FAX **must be directed** to the central FAX

number (703) 872-9306.

9.   Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is (571) 272-

2100.

RAYMOND J. BAYERL
PRIMARY EXAMINER
ART UNIT 2173
10 February 2005